

LOCAL RULES OF PRACTICE OF THE
JUSTICE COURT OF YELLOWSTONE
COUNTY, STATE OF MONTANA
A JUSTICE COURT OF RECORD

PREFACE

The following Rules of Practice supplement the Justice and City Court Civil Rules and the Uniform Justice and City Court Rules. Any conflict shall be controlled by the Justice and City Court Civil Rules and the Uniform Justice and City Court Rules.

RULE 1

DEPARTMENTS

The Yellowstone County Justice Court is divided into two departments. The departments assigned to individual judges and their successors are as follows:

Department 1 – Judge Larry D. Herman

Department 2 – Judge Pedro Hernandez

RULE 2

DIVISION OF BUSINESS

All cases shall be assigned using Full Court to a department randomly in equal numbers between the two departments. No case shall be reassigned to another department at the request of a party, except as may be consolidated under these rules.

RULE 3

CONSOLIDATION

(1) Traffic and criminal violations filed against the same defendant arising out of the same stop, arrest, or transaction and assigned by Full Court to different departments or in the same department with different case numbers, shall be consolidated sua sponte. The consolidated case shall be heard and tried before the judge presiding in the department having the earliest docket assigned.

(2) A motion to consolidate cases (civil or criminal), assigned to different departments, or assigned to the same department, shall be filed in each case. The motion shall be heard by the judge presiding in the department having the earliest docket assigned. If consolidated the cases shall be tried before the judge presiding in the department having the earliest docket assigned.

RULE 4

INITIAL APPEARANCES AND ARRAIGNMENTS

(1) Initial appearances and arraignments are distributed between the two departments as follows:

Monday		2:30 PM	Department 2
	9:30 AM	3:30 PM	Department 1
	2:30 PM		
	3:30 PM	Thursday	
		9:30 AM	Department 2
Tuesday		2:30 PM	Department 2
	9:30 AM	3:30 PM	Department 2
	2:30 PM		
	3:30 PM	Friday	
		9:30 AM	Department 1
Wednesday		2:30 PM	Department 2
	9:30 AM	3:30 PM	Department 1

- (2) Only the judge presiding on the day of the initial appearance or arraignment shall accept pleas whether assigned in the judge's department or another department.
- (3) All not guilty pleas shall be set for an omnibus hearing and trial in the department in which the case is assigned.
- (4) The judge presiding on the day of the initial appearance or arraignment upon acceptance of a guilty or nolo contendere plea shall impose sentence. All petitions for revocation of a suspended or deferred sentences imposed shall be assigned to the judge imposing the original sentence. When the judge presiding on the day of the initial appearance or arraignment is a judge pro tempore all petitions for revocation of a suspended or deferred sentences imposed shall be directed to the judge of the assigned department.

Rule 5

LAW AND MOTION DAY

- (1) Each department will have a weekly Law and Motion day. Law and Motion days are limited to uncontested matters and changes of plea. Matters involving presentation of evidence will not be heard on Law and Motion day, except by leave of court. The Law and Motion days are as follows:

Tuesday

9:30 AM to 10:30 AM Department 2

Thursday

9:30 AM to 10:30 AM Department 1

- (2) Attorneys shall inform the clerk's office in advance of the matters to be presented on Law and Motion day. The matters so designated shall be listed by the clerk on a Law and Motion calendar. The calendar shall be closed at 4:00 PM the day previous to each Law and Motion day.
- (3) Motions to amend, deferred prosecution agreements, plea agreements and other documents requiring the court's approval shall be filed with the clerk's office prior to the closing of the calendar. If the court file does not contain the motions, agreements or documents, the case shall be continued to the next Law and Motion day.

Rule 6

ENTRY OF PLEAS

- (1) A defendant must appear in open court to enter a plea of not guilty. A written not guilty plea will not be accepted by the court.
- (2) An attorney may appear in open court and enter a not guilty plea for a defendant upon the filing with the court the defendant's acknowledgement authorizing the attorney to enter the not guilty plea. Form 1
- (3) Within 10 days of entering the not guilty plea, the attorney shall cause to be filed with the court the defendant's executed "Acknowledgement of Rights and Penalties" and receipt of the "Order Setting Conditions of Bail, Omnibus Hearing and Trial".
- (4) A defendant or defendant's attorney shall appear in open court to enter a plea of guilty or nolo contendere. No plea of guilty, or nolo contendere, shall be accepted by filing a written plea of guilty or nolo contendere with the court. A defendant may physically appear or by two-way electronic audio-video communication. *State v Schneiderhan* (1993 Mont), 261 Mont. 161, 862 P.2d 371
- (5) Before the judge will accept any plea of guilty or nolo contendere, the defendant shall file with the Court a fully executed Acknowledgement of Waiver of Rights by plea of guilty or nolo contendere, containing the information required under §46-12-210(1), MCA. Form 5

(6) At any time after arraignment upon notice to the prosecutor, at the omnibus hearing, or at the pre-trial hearing a defendant may file a notice with the court of defendant's intent to change a plea to guilty or nolo contendere. The filing of the notice to change plea shall be treated as a motion for continuance and waiver of speedy trial. The notice shall state a date and time certain, within 20 days of the notice, the defendant will appear to enter the change of plea. Form 3

Rule 7

REQUIRED APPEARANCES

Upon a defendant's default of physical appearance as ordered for a scheduled court date, except for good cause shown, the right to a jury trial is considered waived by the defendant. See Art II, §26 Montana Constitution

Rule 8

MOTION FOR CONTINUANCE

(1) Motions for continuances are governed by Rule 18, U.J.C.C.R, and §46-13-202, MCA

(2) In criminal actions if the motion for continuance is made more than 30 days after arraignment the motion shall be supported by affidavit or brief. A motion for continuance by the defendant shall contain a waiver of speedy trial.

(3) In civil actions if the motion for continuance is made within 10 days of the date scheduled for trial the motion shall be supported by affidavit, brief, or by stipulation of the parties.

(4) Motions for continuance or re-setting of trial to allow more time for discovery or for convenience of a party will not be granted if made within 30 days of the date set for trial, except for good cause shown.

(5) Motion for continuance or re-setting of a trial because of the unavailability of a witness shall be made not less than 10 days before the date set for trial, except for good cause shown.

(6) No motions for continuance or re-setting of trial shall be granted on the date set for trial, except for good cause shown.

Rule 9

PRETRIAL MOTIONS

Except for good cause shown, all pretrial motions must be made in writing as provided for under §46-13-101, MCA and Rule 6, U.J.C.C.R., at or before the omnibus hearing. Failure to raise defenses or objections or to make required requests prior to trial constitutes a waiver of the defense, objection, or request, except a motion for lack of jurisdiction or failure to state an offense is nonwaivable.

Rule 10

OMNIBUS HEARING

(1) Defendants shall physically appear for the omnibus hearing.

(2) An attorney may appear at the omnibus hearing for a defendant upon the filing with the court of a written acknowledgement by the defendant containing the following: 1) that the defendant was advised by the attorney of the charges, penalties and defenses; 2) that the defendant has the right to appear at the omnibus hearing; 3) that the defendant has the right to view the evidence, including witness statements, police reports, expert reports and lab reports; 3) that the attorney is authorized to act on the defendant's behalf; 4) that defendant has notice of all scheduled court dates requiring the defendant's physical presence; and 5) that the defendant understands the consequences of defendant's failure to physically appear for a scheduled court date. Form 2

(3) The omnibus memorandum shall address plea offers and confirm or demand a jury trial. If an attorney appeared for his client, the attorney shall deliver a copy of the omnibus memorandum to his client.

(4) Upon failure to address the jury trial in the memorandum the action will proceed to trial without a jury. A party may demand a jury trial subsequent to the omnibus hearing and the action will be re-set for a jury trial. A demand for a jury trial within 10 days of the trial date will be treated by the court as a motion for continuance by the demanding party.

(5) Motions for continuances or re-setting of trial to allow more time for discovery or for convenience of a party shall be made at or before the omnibus hearing. Motions for continuance or re-setting of trial to allow more time for discovery or for convenience of a party will not be granted subsequent to the omnibus hearing, except for good cause shown.

(6) On or before the date set for the omnibus hearing, the state and the defendant, or defendant's counsel, may waive a formal omnibus hearing upon filing with the court the following:

(a) The written acknowledgement by the defendant provided for in subsection 10(2) of this rule, if represented by counsel; and

(b) An omnibus memorandum executed by the defendant or defendant's counsel, stipulating to its entry by the court. Form 4

Rule 11

FINAL PRETRIAL

(1) Not less than four days before the date set for a jury trial a final pretrial shall be set by the court. The physical attendance of the defendant and defendant's attorney is required at the final pretrial.

(2) The purpose of the final pretrial is to confirm the calling of a jury, consider possible settlement options and to address pretrial motions. Failure of the defendant to physically attend the final pretrial constitutes a waiver of a jury trial.

Rule 12

TRIALS AND HEARINGS

(1) Each cause shall be tried before the judge of the department to which it is assigned. Non-jury and jury trials will be held throughout the year as time is available.

(2) Criminal matters shall be tried within 6 months of the defendant's arraignment. No cause shall be set for trial beyond 6 months of the defendant's arraignment without a waiver of speedy trial executed by the defendant and filed with the Court before the running of the 6 months.

(3) Civil matters shall be set for trial by the clerk upon the filing of the answer.

(4) Hearings on pre-trial motions shall be set not less than 4 days before the date set for a trial, except for good cause shown.

(5) All orders setting trial or hearing shall be signed by the judge or clerk. The clerk shall serve a copy of the order setting trial or hearing upon all the parties and their counsel by first class mail.

Rule 13

TRIALS IN ABSENTIA

If a defendant fails to appear in person at the time set for trial, and upon a finding that the defendant had knowledge of the trial date and is voluntarily absent, the court shall proceed with the trial in absentia or as provided under 46-16-122, MCA.

Rule 14

WITHDRAWAL OF ATTORNEY

(1) Rule 14 of the Uniform Justice and City Court Rules and Rule 10 of the Uniform District Court Rules shall govern the withdrawal of an attorney.

(2) No withdrawal of an attorney (civil or criminal) is effective without the attorney timely filing with the court a copy of the notice required under Rule 10 of the Uniform District Court Rules. The attorney shall inform the court of the client's address and any other information to assist the court in contacting the client. The notice to the attorney's client shall direct the client to appoint another attorney or appear in person and shall inform the client of all scheduled court dates.

Rule 15

SUBSTITUTION OF JUDGES

(1) Disqualification and substitution of a judge is governed by Title 3, Chapter 1, Part 8, MCA.

(2) When an assigned judge recuses sua sponte, or is sick and unable to act, the assigned judge shall call in to act a judge pro tempore pursuant to §3-10-116, MCA.

(3) When the judge pro tempore has accepted jurisdiction, the clerk shall mail a copy of the acceptance to the parties and their attorneys. Thereafter, all proceedings, motions, hearings, and trials shall be directed to the judge pro tempore assuming jurisdiction and not to the original judge assigned.

Rule 16

ABSENCE OR DISABILITY OF JUDGE

The work in the justice court shall be interchangeable between the judges thereof during the absence or disability of a judge or at the request of a judge. During the absence of a judge, the judge present and presiding, including a judge pro tempore present and presiding, may enter orders and make disposition, temporary or final, of any case or matter pending before the absent judge. However, when any order is made for a hearing to be had thereafter, the judge present and presiding shall make the order returnable before the judge to whom it is assigned. Thereafter, it shall be the duty of counsel to consult with the assigned judge to either confirm or reset the hearing date fixed.

Rule 17

COURT RECORD

The court's proceedings shall be recorded by electronic recording. A party may at the party's expense record a trial or hearing stenographically.

A party may request a copy of the electronic recording. The requesting party shall be liable for the costs of producing a copy of the electronic recording.

Rule 18

APPEALS

The Montana Uniform Municipal Court Rules of Appeal to the District Court, codified in Title 25, chapter 30, shall apply to all appeals to the district court.

Rule 19

FILING OF PAPERS

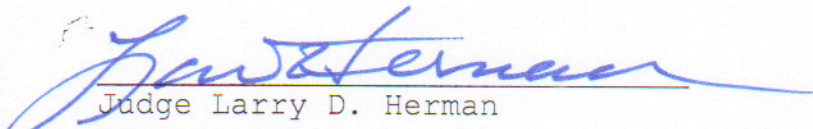
- (1) The office of the justice court clerk shall be deemed always open for the purpose of filing by facsimile or other electronic means any pleading, or other paper, of issuing and returning process and final process, and of making and all interlocutory motions, orders and rules.
- (2) Rule 5 (e), M.R.Civ.P. shall govern the filing in justice court all filings by facsimile or other electronic means.
- (3) §25-3-501, MCA shall govern service of a telephonic or telegraphic copy.
- (4) The filings by facsimile or other electronic means will be treated void if the original document is not filed with the office of the justice court clerk within 5 days of the filing by facsimile or other electronic means.
- (5) The definition of "a day" is defined under §1-1-301(1), MCA.

JUSTICE COURT OF RECORD
YELLOWSTONE COUNTY, MONTANA

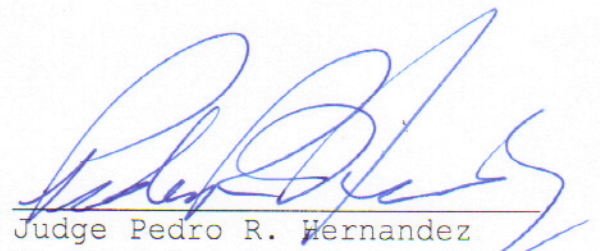
A rule allowing the filing of papers by facsimile or other electronic means will improve the conduct of the court's business.

IT IS HEREBY ORDERED that effective the date of this Order the "Local Rules of Practice of the Justice Court of Yellowstone County" are hereby amended to include a new Rule 19 in the manner set out following this order.

Dated: July 24, 2008



Judge Larry D. Herman
Department 1



Judge Pedro R. Hernandez
Department 2

ADOPTION OF RULES

These rules are hereby adopted and shall apply to and be in force in the Yellowstone County Justice Courts commencing on January 2, 2008, and until further order of the Court.

Dated: January 2, 2008

Judge Larry D. Herman, Department 1

Judge Pedro R. Hernandez, Department 2

IN THE JUSTICE COURT OF RECORD, CRIMINAL DIVISION
COURTCOUNTY COUNTY, MONTANA
BEFORE JUDGE _____

STATE OF MONTANA
PLAINTIFF
VS

_____,
DEFENDANT

Case No.: _____

ACKNOWLEDGEMENT OF RIGHT TO
ATTEND ARRAIGNMENT AND
WAIVER OF PRESENCE

I understand I have the right to be present in court for arraignment and I waive that right.

I have authorized my undersigned attorney to appear and act on my behalf at arraignment.

I acknowledge receipt of the charging document being called upon to plead. The charging document correctly states my true name, gender, date of birth and address.

I acknowledge that my attorney has advised me of the nature of the charges filed against me, the penalties that could be imposed, and of my defenses.

I understand that I may plead guilty, not guilty, or with the consent of the court and the prosecutor, nolo contendere. I have directed my attorney to enter a not guilty plea.

Dated: _____

Defendant

Defendant's Attorney

IN THE JUSTICE COURT OF RECORD, CRIMINAL DIVISION
COURTCOUNTY COUNTY, MONTANA
BEFORE JUDGE _____

STATE OF MONTANA

PLAINTIFF

VS

DEFENDANT

Case No.: _____

ACKNOWLEDGEMENT OF RIGHT TO
ATTEND OMNIBUS HEARING AND
WAIVER OF PRESENCE

I understand I have the right to be present at the Omnibus hearing, and I waive that right.

I have authorized my undersigned attorney to appear at the omnibus hearing and to act on my behalf. I have directed my attorney to deliver a copy of the omnibus memorandum to me.

I acknowledge that my attorney has advised me of the nature of the charges filed against me, the penalties that could be imposed, and of my defenses.

I acknowledge that my attorney has explained to me that I can see and review any physical evidence that the State has in this case, as well as statements of witnesses, police reports, expert reports, and laboratory reports.

I acknowledge that I have received a copy of the Order Setting Conditions of Bail, Omnibus Hearing and Trial filed in this case. I understand the consequences of my failure to appear for a scheduled court date which may include my waiver of a jury trial.

I further acknowledge that I have informed my attorney about any witnesses I know of, and of all relevant information relating to the charges against me as I understand them.

I understand that I have the right to be present and attend trial. In my absence from trial I have authorized my attorney to act on my behalf at the time set for trial as provided for under 46-16-122, MCA.

Dated: _____

Defendant

Defendant's Attorney

IN THE JUSTICE COURT OF RECORD, CRIMINAL DIVISION
 COURT COUNTY COUNTY, MONTANA
 BEFORE JUDGE _____

STATE OF MONTANA

PLAINTIFF

VS

Case No.: _____

_____,

DEFENDANT

NOTICE OF INTENT TO CHANGE PLEA

On _____, 20____, at _____ M, the above named defendant shall appear before the court to enter a change of plea to guilty or nolo contendere to the offense(s) charged in this action.

[I have] [Defendant has] been advised of the right to a trial of a misdemeanor within 6 months under 46-13-401(2) MCA.

[I have] [Defendant has] been advised of the penalties that may be imposed for the offense(s) charged in this action.

[I understand] [Defendant understands] that filing of this notice of intent to change plea shall be treated as a motion for continuance and a waiver of speedy trial.

☐ I understand that I have a right to appear and enter a plea. I have authorized my attorney to appear on my behalf to enter a plea of guilty or nolo contendere. I have been advised by my attorney of the consequences and penalties of entering a plea of guilty or nolo contendere. I waive my right to appear before the court to enter my plea of guilty or nolo contendere.

[Defendant must execute this notice if attorney entering plea change]

Dated: _____

 Defendant

By _____
 Defendant's Attorney

Cc: County Attorney

JUSTICE COURT OF RECORD
CRIMINAL DIVISION
YELLOWSTONE COUNTY, MONTANA
BEFORE JUDGE _____

STATE OF MONTANA

PLAINTIFF

VS

Case No.: _____

_____,

DEFENDANT

MEMORANDUM OMNIBUS HEARING

Aliases:

CHARGES: _____

In compliance with §46-13-110, MCA the parties submit this memorandum to the court and state as follows:

1. An omnibus hearing was held on the date subscribed below.
2. The parties discussed pretrial matters appropriate to the pending case, including, but not limited to, the items set forth in §46-13-110, MCA, a copy attached hereto as exhibit "A".
3. The parties will make a demand for a jury trial within 20 days of this memorandum to allow the court sufficient time to call a jury or reset the trial date. The parties stipulate that a demand for a jury trial within 10 days of the trial date will be treated by the court as a motion for continuance by the demanding party.
4. The State has an open file policy and all files concerning this case are open to the Defendant for inspection.
5. The parties stipulate that all motions requiring a hearing will be made not less than 30 days before the trial date and that motions made within 30 days of the trial date will be submitted to the court upon briefs.
6. The State moves: _____

[File with the court within 5 days a supporting brief and an answer brief within 10 days, Rule 6, UJCCR.]

7. The Defendant moves: _____

[File with the court within 5 days a supporting brief and an answer brief within 10 days, Rule 6, UJCCR.]

8. In the interest of justice, upon a guilty plea by the Defendant, the State will recommend to the court the following:

The State's plea offer will be considered withdrawn if not accepted within 15 days.

9. The parties stipulate that the court has jurisdiction over the subject matter.

10. The parties further stipulate: _____

The State and Defendant have reviewed this memorandum and stipulate to its entry by the court.

☐ The Defendant, or the Defendant's Attorney, did not appear for the omnibus hearing. Failure to appear is a waiver of a jury trial.

Dated: _____

Dated: _____

 Deputy County Attorney

 Defense Counsel or Defendant

Dated: _____

ENTRY SO ORDERED.

 JUDGE

Cc: County Attorney
 Defendant
 Defendant's Attorney

OMNIBUS HEARING
EXHIBIT "A"

46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the Defendant.

(3) The presence of the Defendant is not required. The prosecutor and the Defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or Defendants, [46-11-404](#), [46-13-210](#), and [46-13-211](#);

(b) double jeopardy, [46-11-410](#), [46-11-503](#), and [46-11-504](#);

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, [46-11-701](#);

(d) notification of the existence of a plea agreement, [46-12-211](#);

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, [46-15-323](#);

(g) notice of seeking persistent felony offender status, [46-13-108](#);

(h) notice of other crimes, wrongs, or acts, [46-13-109](#);

(i) motion to suppress, [46-13-301](#) and [46-13-302](#);

(j) motion to dismiss, [46-13-401](#) and [46-13-402](#);

(k) motion for change of place of trial, [46-13-203](#) through [46-13-205](#);

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary.

Rule 6. Motions.

(a) All motions or application for orders in civil or criminal cases must be made in writing as required by Rule 9 of the Montana Justice and City Court Rules of Civil Procedure. This rule does not apply to motions made during the progress of a trial.

(b) At the time of filing the motion, there shall be filed supporting affidavits or documents, if referred to in the motion or notice of motion.

(c) Failure to file briefs may subject the motion to summary ruling. Failure to file a brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file will not subject a motion to summary ruling.

(d) The court may order oral argument on the motion.

(e) Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of the applicable time limits.

(f) The requirement of a brief is fulfilled by a written statement or summary setting forth the facts and basis of the motion. The brief may be made a part of or attached to the motion.

JUSTICE COURT OF RECORD, CRIMINAL DIVISION
 YELLOWSTONE COUNTY, MONTANA
 BEFORE JUDGE _____

STATE OF MONTANA

PLAINTIFF

Case No.: _____

VS

_____,
 DEFENDANT

ENTRY OF GUILTY PLEA

I understand:

1. The nature of the charge(s) for which the plea is offered and the penalty provided by law;
2. My right to plead not guilty;
3. My right be tried by a jury and confront and cross-examine witnesses
4. My rights to an attorney and have a public defender assigned to represent me if necessary;
5. My right to appeal to the district court.

I knowingly, voluntarily and intelligently enter a plea of GUILTY to the offense(s):

☐ COUNT _____ in violation of _____ MCA
 (Describe offense and code violated)

I am not under the influence of alcohol or drugs. I understand that by entering a guilty plea I waive my right to a trial and appeal to the district court.

☐ I understand the dangers of self-representation and waive my right to an attorney or have a public defender assigned to represent me.

☐ I am the attorney for the defendant. I am authorized by the defendant to enter a plea of guilty on the defendant's behalf.

Dated: _____

☒ _____
 DEFENDANT

☒ _____
 DEFENDANT'S ATTORNEY

Upon advisement of the rights and penalties, the court accepted defendant's guilty plea upon finding a factual basis for the plea.

Dated: _____

 Justice of the Peace

IN THE JUSTICE COURT, CRIMINAL DIVISION
 YELLOWSTONE COUNTY, MONTANA
 BEFORE JUDGE _____

STATE OF MONTANA Plaintiff vs _____, Defendant.	DOCKET: _____ _____ WAIVER OF SPEEDY TRIAL _____
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I have been charged with the following:

The court has advised me of my right to a speedy trial. I understand that after my entry of a plea upon a misdemeanor charge I must be tried within 6 months unless the trial has been postponed by me. I have requested that my trial be postponed.

UNDERSTANDING OF MY RIGHT TO A SPEEDY TRIAL, I WAIVE MY RIGHT TO A SPEEDY TRIAL.

I understand that I have the right to be present and attend trial. I understand that I waive my right to be present and attend trial upon my voluntary failure to appear for trial. The court upon my failure to appear at the time set for trial may proceed with the trial in my absence as provided for under §46-16-122, MCA.

In my absence from trial I have authorized my attorney _____ to act on my behalf at the time set for trial as provided for under §46-16-122, MCA.

Dated: _____.

 DEFENDANT